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DISTRICT COURT
BY: [Signature]
DEPT. OF JUSTICE

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Attorneys for Plaintiff MK Gold Company

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MK GOLD COMPANY, a Delaware corporation,)
Plaintiff,)

vs.)

MORRISON KNUDSEN CORPORATION, a)
Delaware corporation,)
Defendant.)

LEUCADIA NATIONAL CORPORATION, a)
New York corporation,)
Plaintiff,)

vs.)

MORRISON KNUDSEN CORPORATION, a)
Delaware corporation, ROBERT A. TINSTMAN,)
an individual, STEPHEN G. HANKS, an)
individual, and JOHN DOES 1-10, individuals,)
Defendants.)

ORDER

Civil No. 2:96-CV-935 ST
Civil No. 2:98-CV-327 ST

Honorable Ted Stewart

425

This case came on for hearing on February 28, 2001, at 9:30 a.m. The Honorable Ted Stewart, U.S. District Judge, presided. David A. Greenwood appeared on behalf of plaintiff MK Gold Company. Alan L. Sullivan appeared on behalf of plaintiff Leucadia National Corporation. Brent O. Hatch and Mark R. Clements appeared on behalf of defendant Morrison Knudsen Corporation.

The Court heard oral argument on defendant Morrison Knudsen Corporation's Motion to Prohibit Plaintiff MK Gold From Filing Additional Expert Reports. Having considered the argument of counsel, the memoranda of law, and all relevant authorities, the Court enters the following Order:

1. Morrison Knudsen did not indicate the basis for its motion. The Court views the motion as one brought under Fed. R. Civ. P. 37(c)(1). The Court analyzes the motion under the standards set forth in *Woodworker's Supply, Inc. v. Principal Mutual Life Insurance Co.*, 170 F.3d 985 (10th Cir. 1999):

a. Prejudice/Surprise:

There is no prejudice or surprise to Morrison Knudsen, as it specifically agreed MK Gold could name additional expert witnesses in connection with the San Cristobal project. Morrison Knudsen bargained for and obtained a benefit in connection therewith, as it was allowed to bring a motion for summary judgment it otherwise could not have brought. The parties did not place a cutoff date on naming any such experts, and MK Gold provided its expert reports within a reasonable time after the close of discovery. Morrison Knudsen should have been prepared to receive such reports.

b. Ability to Cure Prejudice:

Any burden on Morrison Knudsen may be difficult at this juncture but certainly not impossible. Morrison Knudsen should have been expecting such reports.

c. Extent Testimony Would Disrupt Trial:

Testimony on the experts' subjects was contemplated by the parties and would not disrupt the trial.

d. Moving Party's Bad Faith or Willfulness:

The court finds Morrison Knudsen is not acting in bad faith.

Based on the foregoing, Morrison Knudsen's Motion to Prohibit Additional Expert Reports is DENIED.

2. The Court further orders as follows:

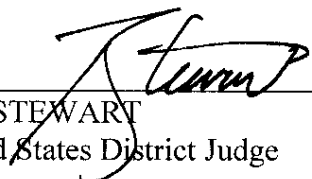
a. MK Gold shall produce all documents relied upon in the expert reports of Frank McAllister and John Brough not otherwise available to Morrison Knudsen by Friday March 2, 2001.

b. Trial remains set for a three-week jury trial commencing April 2, 2001.

c. Morrison Knudsen's Motion for Summary Judgment regarding San Cristobal and the individual defendants' Motion for Clarification or in the Alternative for Summary Judgment shall be heard on oral argument at the final Pretrial Conference.

DATED this 8th day of March, 2001.

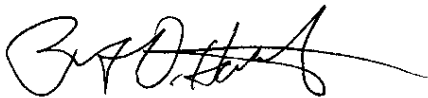
BY THE COURT:



TED STEWART
United States District Judge

APPROVED AS TO FORM:

HATCH, JAMES & DODGE

By: 
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Mark R. Clements
Attorneys for Defendants

SNELL & WILMER

By: 
Alan L. Sullivan
Attorneys for Plaintiff Leucadia National Corporation

tsi

United States District Court
for the
District of Utah
March 8, 2001

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:96-cv-00935

True and correct copies of the attached were either mailed or faxed by the clerk to the following:

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